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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,450	07/07/2003	Stan Batiste	5-1574-018	7504
803 7590 04/07/2006			EXAMINER	
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			BIANCO, PATRICIA	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,450

Applicant(s)

BATISTE, STAN

Examiner

Patricia M. Bianco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 5 is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

In the amendment submitted 1/17/06, applicant submitted a new abstract, amended claims 1 & 5, added new claim 6, and cancelled claims 2-4.

As a result, claims 1, 5, and 6 is currently pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Buselmeier (3,826,257). Buselmeier discloses a prosthetic shunt or graft device that may be used in hemodialysis to remove blood from and return blood to a patient after being treated by a dialysis machine. The device is a tubular body having an inlet and outlet at each end (17'), and an intermediate segment (33) that is tapered and therefore has a reduced inner diameter. The tapering results in a more narrow end, which is seen to be equivalent to applicant's gradually diminishing segment, and has a larger diameter end

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which is seen to be equivalent to applicant's gradually expanded segment. See Figure 10.

Claim 6 rejected under 35 U.S.C. 102(e) as being anticipated by Stanish (6,585,762). Stanish discloses an arteriovenous graft. The graft (210/310) has a tubular body having an inlet and outlet at each end, and an intermediate segment (223+240+233 or 323+340+333) that is tapered and therefore has a reduced inner diameter. The tapering results in a more narrow end (223 or 233/323 or 333), which is seen to be equivalent to applicant's gradually diminishing segment, and has a larger diameter section (240/340) which is seen to be equivalent to applicant's gradually expanded segment.

Allowable Subject Matter

Claims 1 & 5 are allowed. The subject matter that was not found is the intermediate portion comprising an abrupt crimped segment in combination with the other elements (or steps) in the claims.

Response to Arguments

Applicant's arguments filed 1/17/06 have been fully considered but they are not persuasive. Applicant argues that neither the Buselmeir nor the Stanish patents anticipate the claimed invention since neither teach of a graft having a continuous length of polymer tubing having a portion that comprises a gradually diminishing segment

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followed by a gradually expanding segment that has a generally uniform inside diameter. The examiner respectfully disagrees. Both the Buselmeir nor the Stanish patents show a single, continuous length of tubing each having a gradually diminishing segment followed by a gradually expanding segment. With respect to the argument that the inside diameter is generally uniform, generally is a relative term and both the Buselmeir nor the Stanish patents has a generally uniform internal diameter.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia M. Bianco whose telephone number is (571) 272-4940. The examiner can normally be reached on Monday to Friday 9:00-6:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 2nd, 2006


PATRICIA BIANCO
PRIMARY EXAMINER

Patricia M Bianco
Primary Examiner
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